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12/7/16 (22) City Original

AMENDMENT NO. 1 TO MASTER CONCESSIONAIRE PROPERTY USE AGREEMENT

This Amendment No.1 to the Master Concessionaire Property Use Agreement is made this 11th day of November 2016 ("Amendment"), by and between the City of Oceanside, a California charter-city, hereinafter called ("City"), and MainStreet Oceanside, Inc., a California non-profit corporation, hereinafter called ("Permittee").

RECITALS

WHEREAS, City and Permittee entered into a Master Concessionaire Property Use Agreement ("Agreement") dated July 6, 2005, whereby Permittee was given authorization for non-exclusive use of certain real property (the "Premises"), commonly known as the "The Strand";

WHEREAS, City and Permittee are desirous of extending the term of their Agreement for an extension period of 10 years commencing retroactive to July 15, 2010 and terminating on July 14, 2020;

WHEREAS, this extension of the term pertains to the first and second extensions of option years to extend under the Agreement dated July 6, 2005; and

WHEREAS, the parties have calculated the market rent for the requested extension period.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereto agree as follows:

AGREEMENT

The Agreement shall be amended to read as follows:

1. **Section 2: TERM**, Subsections 2.01 and 2.02 are hereby deleted in their entirety and replaced with the following language.

2.01 Extended Term for Premises. The term of this Agreement for the Premises is extended for ten (10) years commencing retroactive to July 15, 2010 and terminating on July 14, 2020.

2.02 Extension of Term. The term of this Agreement may be extended for **two (2) additional (5)-year periods** under the terms and conditions of this Agreement at the City's calculated fair market property use payment rate of similar businesses provided that Permittee is not in default of this Agreement. The Permittee may request a **five (5)-year extension** of the term by providing the City Manager with its written request no later than **ninety (90) days** prior to the expiration of the term of this Agreement or a **five (5)-year extended term**, as applicable. The City Manager or City Manager's designee shall notify the Permittee not later than **thirty (30) days** after receipt of such request whether such request will be recommended to the City Council for approval. Upon notification that the request will be recommended for approval, the City Manager shall provide Permittee with City's calculated fair market payment rate amount that the City is willing to accept for Permittee's use and occupation of the Premises during the extension term. City Manager's failure to provide the new payment rate amount within said timeframe shall not defeat City's ability to make adjustments to the payment rate. Recommendation by the City

Manager does not constitute City approval of the extension request. The City Manager, in his/her capacity as the City's authorized representative, shall, in his/her sole discretion, have the authority to deny any such request. Any such denial shall be sent to Permittee not later than **thirty (30) days** from receipt of the request for extension.

The City Council, at its sole discretion, may approve or deny the extension of the term of this Agreement. In the event the City Council is unable to consider the renewal request in sufficient time as to provide Permittee with **thirty (30) days**, notice of termination in the case of denial, the Agreement shall be extended for a period not to exceed **thirty (30) days**, to allow for such **thirty (30) day** notice of termination.

2. **Section 3: PROPERTY USE PAYMENT**, Subsection 3.02 is hereby amended by adding the following language.

3.02 Percentage Rent Payment. Retroactive to July 15, 2015, Permittee shall pay Percentage Rent in accordance with Section 3 as follows:

<u>Gross Annual Revenue from Vendors</u>	<u>Percentage Rent Payment</u>
\$0 - \$50,000	5.0%
\$50,001 - \$100,000	6.0%
\$100,001 and above	7.5%

3. All other terms, conditions, covenants and provisions of this Agreement shall remain in full force and effect. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall control.

IN WITNESS THEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do herein agree to the full performance of this Amendment.

CITY

The City of Oceanside
A California charter City

By: _____

City Manager

APPROVED AS TO FORM

By: _____

City Attorney

PERMITTEE

MainStreet Oceanside, Inc.
A California non-profit corporation

By: _____

Name: Sylvia Spiva

Title: Board Chair

By: _____

Name: Kim Millwood

Title: Secretary

NOTARY ACKNOWLEDGMENTS OF PERMITTEE'S SIGNATURE(S) MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

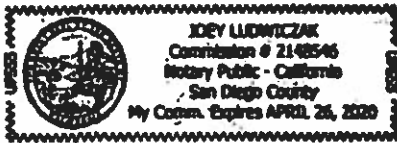
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of SAN DIEGO)
On NOV 18, 2016 before me, JOEY LUDWICZAK Notary Public
Date Here Insert Name and Title of the Officer
personally appeared SYLVIA SPIVA AND
Name(s) of Signer(s)
KIM MILLWOOD

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature _____
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____
 Corporate Officer — Title(s): _____ Corporate Officer — Title(s): _____
 Partner — Limited General Partner — Limited General
 Individual Attorney in Fact Individual Attorney in Fact
 Trustee Guardian or Conservator Trustee Guardian or Conservator
 Other: _____ Other: _____
Signer Is Representing: _____ Signer Is Representing: _____



CITY OF OCEANSIDE

Economic & Community Development

May 3, 2010

Mr. Richard G. Wright
Main Street Oceanside
701 Mission Ave.
Oceanside, California 92054

Re: Renewal of the Master Concessionaire Property Use Agreement

Dear Mr. Wright:

This letter is to acknowledge the renewal of the Master Concessionaire Property Use Agreement between the City of Oceanside and Main Street Oceanside, Inc. on City Owned Real Property located at The Strand, dated July 6, 2005 ("Agreement"). Please be advised that the term of the Agreement will be extended one (5) additional years, expiring on July 14, 2015, as a result of the exercise of the one (5) year renewal option set forth in your letter dated March 22, 2010.

Should you have any questions, please contact me at (760) 453-5163.

Very Truly Yours,


Curtis M. Jackson
Property Agent

cc: Jane McVey, Economic & Community Development Director
Doug Eddow, Real Property Manager